

***Case No COMP/M.3836 -
GOLDMAN SACHS /
PIRELLI CAVI E
SISTEMI ENERGIA /
PIRELLI CAVI E
SISTEMI TELECOM***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 05/07/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.07.2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party :

Dear Sir/Madam,

**Subject: Case No COMP/M.3836 – GOLDMAN SACHS / PIRELLI CAVI E SISTEMI ENERGIA / PIRELLI CAVI E SISTEMI TELECOM
Notification of 02/06/05 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02/06/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which investment funds controlled by Goldman Sachs & Co ('Goldman Sachs', USA), part of the Goldman Sachs Group, acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the energy and telecommunications cables business ('Cables', Italy) of Pirelli & C. SpA by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **Goldman Sachs** is an US based, global investment banking, securities and investment management firm that provides a wide range of banking, securities and investment services worldwide.
4. **Pirelli Cavi e Sistemi Energia SpA (PCS Energia) and Pirelli Cavi e Sistemi Telecom SpA (PCS Telecom)** are two separate divisions of the Pirelli Group, established under Italian law, which are active in the global production and sale of cable systems. **Pirelli Energie Câbles et Systèmes France (PCS France) and Pirelli Kabel und Systeme Holding GmbH (PCS Germany)** are fully owned national subsidiaries of Pirelli (which is the holding company of the Pirelli Group) in the area of (energy) cable and cable systems. Together they form '**Cables**'.
5. Cables is active in the development, design, production, distribution and installation of a broad array of cables and accessories covering several applications in the energy cables sector (general wiring, rod, submarine cables, automotive cables, low and medium voltage, high and extra high voltage cables and accessories) and in the telecoms cables sector (optical fibre, copper). The energy cables business is the main activity of Cables, accounting for more than 87% of its worldwide turnover and more than 95% of its community-wide turnover.

II. THE OPERATION

6. Goldman Sachs Capital Partners (whose investment manager is Goldman, Sachs & Co, a wholly owned direct and indirect subsidiary of the Goldman Sachs Group Inc.) will acquire sole control over Cables.
7. The operation involves the acquisition of 100% of the shares in PCS Energia and of 100% of the shares in PCS Telecom from Pirelli and/or its group companies. Prior to that, 100% of the shares in PCS France and 100% of the shares of PCS Germany will be acquired from Pirelli Group companies.

III. CONCENTRATION

8. The operation concerns the acquisition by Goldman Sachs of sole control over Cables. The proposed transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Goldman Sachs: 16,653 million Euro, Cables: [...] million Euro). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (Goldman Sachs: [...] million Euro, Cables: [...] million Euro), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

V. COMPETITIVE ASSESSMENT

1. Relevant markets

Relevant Product Market

10. The activities of Cables can be subdivided in two main product categories: the production and sale of (a) energy cables and (b) telecom cables as well as the respective accessories for both product families.

A. Energy cables

11. Energy cables are used for a number of applications, in which electrical energy must be transmitted from one location to another. Those applications include the transmission and distribution of electrical power through the utility companies' networks, carrying the electrical power within buildings and usage in industrial applications. Different types of energy cables can be distinguished primarily by their technical capability to carry different levels of voltage and – partly as a function of this – by the customer groups they are marketed to.
12. In a previous decision³ the Commission has defined the energy cable-related markets in which Cables, through PCS Energia, is active as follows: (i) general wiring, which consists of a variety of low voltage cables used for example for building and industrial applications and for power and signal supply of mobile devices, railways, automobile cables, or petrochemical installations; (ii) copper rod, which is one of the main raw materials, used in the manufacture of some power cables, winding wires, general cables and metallic communications cables; (iii) low voltage (LV) and medium voltage (MV) power cables, which are predominantly used in the distribution of electricity; (iv) high voltage (HV) and extra-high voltage (EHV) power cables, which are used for the transmission of power and are mainly purchased by the large national grid operators; (v) cable accessories, which are sold separately from LV and MV power cables and represent a modest business.
13. In the present case the parties submit that these market definitions should still hold since there are no major industry trends, which would suggest a change of the competitive conditions in this sector with relevance for the product market definition. However, the exact product market definition can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

B. Telecom cables

14. Telecom cables are used to transmit voice, data or other forms of communication signals via electromagnetic or optical (light) signals through a fixed-line connection.
15. In a previous decision⁴ the Commission has defined the telecom cable-related markets in which Cables, through PCS Telecom, is active as follows: (i) *optical fibre cable*, which is typically used for the transmission of electronic communications signals in backbones as well as international and domestic telecom networks using broadband

³ Case No. COMP/M.1882 – *Pirelli/BICC*.

⁴ Case No. COMP/M.2574 – *Pirelli/Edizione/Olivetti/Telecom Italia*.

technology and (ii) *copper cable*, which was originally used in all telecom networks using narrowband technology and today is mostly used in the provision of last mile telecom connections and building cabling.

16. In the present case the parties submit that these market definitions should still hold since the price and the installation costs of optical fibre cables are still – despite of a reduction of the respective price difference over the last years – approximately double to that of copper solutions in terms of Euro per home passed. Moreover, optical fibre cables and copper cables differ as to the technical characteristics (materials, manufacturing process), the performance and the predominant area of application.⁵ However, the exact product market definition can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

Relevant geographic market

A. Energy cables

17. In a previous decision⁶ the Commission has found that the energy cable-related markets are all at least EEA-wide in scope. This conclusion was mainly based on the fact that all of the mentioned energy cable-related markets are by their nature cross-border both in terms of supply and demand.
18. However, the exact geographical market definition can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

B. Telecom cables

19. In a previous decision⁷ the Commission has found that the telecom cable-related markets are all at least EEA-wide in scope. This conclusion was mainly based on the fact that all of the mentioned telecom cable-related markets are by their nature cross-border both in terms of supply and demand.
20. In the present case the parties point out that, as far as optical fibre cables are concerned, recent developments such as increasing export/import volumes and the international reach of telecoms fibre infrastructures which enables global connectivity and product standardisation, may now indicate a world-wide market. However, the exact geographical market definition can in this respect be left open as the transaction, even with the narrowest market definition, does not raise any competition concerns.

⁵ While copper cables carry electromagnetic signals and are typically bandwidth-constrained, optical fibre cables transmit light impulses through a fibre strain at comparatively high bandwidths. Fibre optic cables are primarily used for international communication infrastructure trunk lines and backbones and for metropolitan exchanges. Copper cables are mainly used for inner-city and last mile connections, due to the lower cost of installation and to the capacity improvements allowed for by XDSL technology.

⁶ Case No. COMP/M.1882 – *Pirelli/BICC*.

⁷ Case No. COMP/M.2574 – *Pirelli/Edizione/Olivetti/Telecom Italia*.

2. Competition analysis

Horizontal overlap

A. Energy cables

21. Since neither Goldman Sachs, nor any of the portfolio companies in which a controlling interest might be held by the Goldman Sachs Capital Partners, is active on the same relevant markets as Cables - the energy cable-related markets - there is no horizontal overlap due to the transaction.

B. Telecom cables

22. Since neither Goldman Sachs, nor any of the portfolio companies in which a controlling interest might be held by the Goldman Sachs Capital Partners, is active on the same relevant markets as Cables- the telecom cable-related markets - there is no horizontal overlap due to the transaction.

Vertical relationships

A. Energy cables

23. Neither Goldman Sachs, nor any of the portfolio companies in which a controlling interest might be held by the Goldman Sachs Capital Partners, controls any undertaking with activities in markets upstream or downstream of those on which PCS Energia is active.

B. Telecom cables

25. On the market for copper cables, measured in relevant sales, Cables has a world-wide market share of approximately [0-5 %] and an EU-wide market share of approximately [10-15 %]. On the market for optic fibre cables these shares are approximately [10-15 %] (world-wide) and [30-35 %] (EU-wide).
26. Goldman Sachs does have jointly controlling interests in two cable TV operating companies, Kabel Deutschland⁸ and Cablecom⁹, which could potentially be considered as customers of PCS Telecom's upstream telecom cable activities. Neither are *actual* customers of PCS Telecom.
27. The purchase volumes of Kabel Deutschland and Cablecom on the downstream cable TV transmission markets are marginal with respect to overall production. Kabel Deutschland is a cable TV operator active in certain regions of Germany, whose network covers only approximately half of Germany. Cablecom has only marginal activities in the Community (in Austria, while the major part of its operations as a cable TV operator is in Switzerland). Therefore competing cable suppliers of PCS Telecom would still have sufficient sales opportunities downstream in the Community.

⁸ Case No. COMP/M.2995 – *Apax Europe V/Goldman Sachs/ Providence Telekom Cable/JV*.

⁹ Case No. COMP/M.3221 – *Apollo/Soros/Goldman Sachs/Cablecom*.

28. Furthermore, given the strength of competitors of PCS Telecom, such as Corning, DrakaComteq and OFS, on the upstream telecoms cable markets, and the fact that there is no capacity shortage in the fibre optical cables market, it can be excluded that cable customers competing with Kabel Deutschland or Cablecom downstream would be foreclosed from competitive cable supply.
29. Therefore it can be concluded that no risks of foreclosure effects exist in the telecom cable-related market and that the proposed transaction will not lead to the creation or strengthening of a dominant position, as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof.

VI. CONCLUSION

30. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission